

Pension Benefit Guaranty Corporation

§ 4007.8

§ 4007.3 Filing requirement; method of filing.

(a) *In general.* The estimation, determination, declaration, and payment of premiums shall be made in accordance with the premium instructions on the PBGC's Web site (<http://www.pbgc.gov>). Subject to the provisions of § 4007.13, the plan administrator of each covered plan is responsible for filing prescribed premium information and payments. No later than the applicable due date(s) specified in this part, a plan's required premium payment(s) and related information, certified as provided in the premium instructions, must be filed in the manner and format prescribed in the instructions.

(b) *Electronic filing.* Information must be filed electronically except to the extent that the PBGC grants an exemption for good cause in appropriate circumstances. The requirement to file electronically applies to filings for plan years beginning in 2006 that are made on or after July 1, 2006, for plans with 500 or more participants for the prior plan year and to filings for all plans for plan years beginning after 2006. (The requirement to file electronically applies to all estimated and final flat-rate and variable-rate premium filings (including amended filings) but does not apply to information filed to comply with a PBGC request under (4007.10(c) (dealing with providing record information in connection with a premium compliance review).) Unless an exemption applies, filing on paper or in any other manner other than by a prescribed electronic filing method does not satisfy the requirement to file. Failure to file electronically as required is subject to penalty under ERISA section 4071.

[71 FR 31081, June 1, 2006, as amended at 72 FR 71229, Dec. 17, 2007; 73 FR 15076, Mar. 21, 2008]

§ 4007.4 Where to file.

See § 4000.4 of this chapter for information on where to file.

[71 FR 31081, June 1, 2006]

§ 4007.6 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this

part. However, for purposes of determining the amount of a late payment interest charge under § 4007.7 or of a late payment penalty charge under § 4007.8, the rule in § 4000.43(a) of this chapter governing periods ending on weekends or Federal holidays does not apply.

[68 FR 61352, Oct. 28, 2003]

§ 4007.7 Late payment interest charges.

(a) If any premium payment due under this part is not paid by the due date prescribed for such payment by this part, an interest charge will accrue on the unpaid amount at the rate imposed under section 6601(a) of the Code for the period from the date payment is due to the date payment is made. Late payment interest charges are compounded daily.

(b) With respect to any PBGC bill for a premium underpayment and/or interest thereon, interest will accrue only until the date of the bill if the premium underpayment and interest billed are paid within 30 days after the date of the bill.

[61 FR 34020, July 1, 1996, as amended at 72 FR 71229, Dec. 17, 2007; 73 FR 15076, Mar. 21, 2008]

§ 4007.8 Late payment penalty charges.

(a) *Penalty charge.* Subject to the provisions of § 4007.13, if any premium payment due under this part is not paid by the due date under this part, the PBGC will assess a late payment penalty charge as determined under this paragraph (a), except to the extent the charge is waived under paragraphs (b) through (g) of this section. The charge will be no more than 100% of the unpaid premium. The amount determined under this paragraph (a) will be based on the number of months (counting any portion of a month as a whole month) from the due date to the date of payment and is subject to a floor of \$25 (or, if less, the amount of the unpaid premium). The penalty rate is—

(1) 1% per month (for all months) on any amount of unpaid premium that is paid on or before the date the PBGC issues a written notice to any person liable for the premium that there is or may be a premium delinquency (e.g., a

premium bill, a letter initiating a premium compliance review, or a letter questioning a failure to make a premium filing); or

(2) 5% per month (for all months) on any amount of unpaid premium that is paid after that date.

(b) *Hardship waiver.* The PBGC may grant a waiver based upon a showing of substantial hardship as provided in section 4007(b) of ERISA.

(c) *Reasonable cause waivers.* PBGC will waive all or part of a late payment penalty charge if PBGC determines that there is reasonable cause for the late payment. Policy guidelines for applying the “reasonable cause” standard are in §§22 through 25 of the Appendix to this part.

(d) *Other waivers.* PBGC may waive all or part of a late payment penalty charge in other circumstances without regard to whether there is reasonable cause. Policy guidelines for waivers without reasonable cause are in §21(b)(1), (b)(3), (b)(4), and (b)(5) of the Appendix to this part.

(e) *Grace period.* With respect to any PBGC bill for a premium underpayment, the PBGC will waive any late payment penalty charge accruing after the date of the bill, provided the premium underpayment is paid within 30 days after the date of the bill.

(f) *Safe-harbor relief for certain large plans.* This waiver applies in the case of a plan for which a reconciliation filing is required under §4007.11(a)(3)(iii). The PBGC will waive the penalty on any underpayment of the flat-rate premium for the period that ends on the date the reconciliation filing is due if either—

(1) Fewer than 500 participants are reported for the plan year preceding the premium payment year (determined in accordance with paragraph (h) of this section), or

(2) The due date for paying the flat-rate premium for the plan year preceding the premium payment year is later than the due date for paying the flat-rate premium for the premium payment year.

(g) *Safe-harbor relief for plans that make minimum estimated payment.* This waiver applies in the case of a plan for which a reconciliation filing is required under §4007.11(a)(2)(iii). The PBGC will waive the penalty on any

underpayment of the flat-rate premium for the period that ends on the date the reconciliation filing is due if, by the date the flat-rate premium for the premium payment year is due under §4007.11(a)(2)(i), the plan administrator pays at least the lesser of—

(1) 90% of the flat-rate premium due for the premium payment year; or

(2) 100% of the flat-rate premium that would be due for the premium payment year if the number of participants for that year were the lesser of—

(i) The number of participants for whom premiums were required to be paid for the plan year preceding the premium payment year; or

(ii) The number of participants reported for the plan year preceding the premium payment year (determined in accordance with paragraph (h) of this section).

(h) *Reported participant count.* For purposes of paragraphs (f) and (g)(2)(ii) of this section, the number of participants reported for the plan year preceding the premium payment year is the number of participants last reported under this part to the PBGC (for the plan year preceding the premium payment year) by the date the flat-rate premium for the premium payment year is due under §4007.11(a)(2)(i).

(i) *Safe harbor relief for certain plan amendments prospectively changing plan year.* This waiver applies in the case of a plan for which a reconciliation filing is required under §4007.11(a)(3)(iii). The PBGC will waive the penalty on any underpayment of the flat-rate premium for the period that ends on the date the reconciliation filing is due if, by the date the flat-rate premium for the premium payment year is due under §4007.11(a)(2)(i),—

(1) The plan has been amended to change its plan year and the amendment as in effect on that date makes the premium payment year a short year that will end after that date; and

(2) The plan administrator pays at least the lesser of—

(i) The amount determined under §4007.8(g) based on the actual length of the premium payment year, or

(ii) The amount determined under §4007.8(g) based on the length that the premium payment year would have if

the new plan year cycle began as anticipated by the amendment.

(j) *Variable-rate premium penalty relief.* This waiver applies in the case of a plan for which a reconciliation filing is required under § 4007.11(a)(2)(ii) or (a)(3)(iv). PBGC will waive the penalty on any underpayment of the variable-rate premium for the period that ends on the earlier of the date the reconciliation filing is due or the date the reconciliation filing is made if, by the date the variable-rate premium for the premium payment year is due under § 4007.11(a)(2)(i) or (a)(3)(ii)—

(1) The plan administrator reports—

(i) The fair market value of the plan's assets for the premium payment year, and

(ii) An estimate of the plan's premium funding target for the premium payment year that is certified by an enrolled actuary to be a reasonable estimate that takes into account the most current data available to the enrolled actuary and that has been determined in accordance with generally accepted actuarial principles and practices; and

(2) The plan administrator pays at least the amount of variable-rate premium determined from the value of assets and estimated premium funding target so reported.

[64 FR 66385, Nov. 26, 1999, as amended at 65 FR 75164, Dec. 1, 2000; 71 FR 66869, Nov. 17, 2006; 72 FR 71229, Dec. 17, 2007; 73 FR 15076, Mar. 21, 2008]

§ 4007.9 Coverage for guaranteed basic benefits.

(a) The failure to pay the premiums due under this part will not result in a plan's loss of coverage for basic benefits guaranteed under section 4022(a) or 4022A(a) of ERISA.

(b) The payment of the premiums imposed by this part will not result in coverage for basic benefits guaranteed under section 4022(a) or 4022A(a) of ERISA for plans not covered under title IV of ERISA.

[61 FR 34020, July 1, 1996, as amended at 72 FR 71229, Dec. 17, 2007]

§ 4007.10 Recordkeeping; audits; disclosure of information.

(a) *Retention of records to support premium payments—*(1) *In general.* The des-

ignated recordkeeper under paragraph (a)(3) of this section must retain, for a period of six years after the premium due date, all plan records that are necessary to establish, support, and validate the amount of any premium required to be paid and any information required to be reported ("premium-related information") under this part and part 4006 of this chapter and under PBGC's premium filing instructions. Records that must be retained pursuant to this paragraph include, but are not limited to, records that establish the number of plan participants and that support and demonstrate the calculation of unfunded vested benefits.

(2) *Electronic recordkeeping.* A designated recordkeeper may use electronic media for maintenance and retention of records required by this part in accordance with the requirements of subpart E of part 4000 of this chapter.

(3) *Designated recordkeepers.*

(i) With respect to the flat-rate and variable-rate premiums described in § 4006.3 of this chapter, the plan administrator is the designated recordkeeper.

(ii) With respect to the premium for certain terminated single-employer plans described in § 4006.7 of this chapter, each person who was a contributing sponsor of such a plan, or was a member of a contributing sponsor's controlled group, as of the day before the plan's termination date is a designated recordkeeper.

(4) *Records.* (i) Records that must be retained pursuant to paragraph (a)(1) of this section include, but are not limited to, records prepared by the plan administrator, a plan sponsor, an employer required to contribute to the plan with respect to its employees, an enrolled actuary performing services for the plan, or an insurance carrier issuing any contract to pay benefits under the plan.

(ii) For purposes of this section, "records" include, but are not limited to, plan documents; participant data records; personnel and payroll records; actuarial tables, worksheets, and reports; records of computations, projections, and estimates; benefit statements, disclosures, and applications; financial and tax records; insurance contracts; records of plan procedures and practices; and any other records,